IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 87 OF 1987
With
CROSS OBJECTION NO. 13 OF 2007
In
FIRST APPEAL NO. 87 OF 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
HARESHBHAI ICHCHHASHANKER MEHTA & ANR. - Respondent(s)

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Appearance :
Ms. Jyoti Mehta for Shri Hardik C. Rawal for Appellant(s).
Shri Premal S. Raj for Respondent(s): 1.
None for Respondent(s) : 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/07/2007

COMMON ORAL JUDGMENT

1. The appellant – Gujarat State Road Transport Corporation,

being aggrieved by the judgement and award dated 10th February, 1986 passed by the learned Member, Motor Accident Claims Tribunal (Main), Rajkot in M. A. C. Case No.435 of 1983, is before this Court submitting, *inter alia*, that the award deserves to be reduced by Rs.70,000/- at least. On the other hand, the injured-claimant-respondent No.1 has filed the Cross Objections seeking enhancement in the amount so awarded.

2. As the appeal is confined to the quantum of compensation only, this Court is not required to enter into the facts and detail the same unnecessarily.

3. Ms. Jyoti Mehta, learned Counsel for the appellant, after taking me through the judgement passed by the learned Tribunal below, especially, paragraphs 28 and 58, submits that the learned Tribunal below was unjustified in making the award for the future loss of income despite holding that there is no future economic loss. She also submitted that the learned Tribunal was also unjustified in awarding Rs.60,000/- towards pain, shock and suffering, loss of future enjoyment, etc. She submits that the award has to be reduced by Rs.70,000/-.

4. Shri Premal S. Raj, learned Counsel for respondent No.1, however, submits that the learned Tribunal below, despite holding that the total disability was of 79.2% and further holding that the monthly loss could be Rs.900/- per month, erred in making the calculation at the

rate of Rs.500/- per month. He also submits that the learned Tribunal should have awarded a sum of Rs.10,000/- towards medical expenses, attendant charges and special diet. He also submits that the amount of Rs.60,000/- under the head of pain, shock and suffering is less because number of operations were performed on the body of the claimant and from the doctor's report, it would clearly appear that his disabilities are permanent in nature, his urethra is blocked and his fertility is adversely affected.

5. So far as future loss of income is concerned, the learned Tribunal below in paragraph 58 of the judgement has held that even though the applicant/claimant suffered the disabilities there would be no direct loss in the income. Despite holding this, the learned Tribunal has held that the future loss of income would be Rs.500/- or Rs.6,000/- yearly. In the opinion of this Court, in view of the findings recorded by the learned Court below, that the amount of Rs.5,000/- per month with a multiplier of 15 could not be awarded in favour of the respondent-claimant.

Taking into consideration the totality of the circumstances, I feel that under this head, the respondent No.1 should get a sum of Rs.10,000/- as a lump sum compensation.

6. So far as the award in relation to the medical treatment,

expenses of the attendant and special diet are concerned, the respondent-claimant certainly should get a sum of Rs.10,000/-. The learned Tribunal was unjustified in awarding a sum of Rs.3,000/- only, less realising that the appellant was confined to bed at least for a period of 100 days. Under the head of medical assistance, attendant charges and special diet, I hereby award a sum of Rs.10,000/- in favour of the respondent-claimant.

7. After taking me through the evidence, Ms. Mehta, learned Counsel, submitted that the learned Tribunal below was unjustified in holding that the total disability suffered by the claimant would be 79.2%. She submitted that injury to the urethra was assessed at 60% disability, but, the same would not mean that it would be 60% disability for the whole of the body. She submits that in a case like the present, the Court is required to consider the total disability. The disability percentage on different parts of body are not to be added together, but, the percentage should be taken on the basis of the part of the body.

8. Shri Raj, learned Counsel for the respondent-claimant, on the other hand, after taking me through the evidence, submitted that present is a case where the appellant had suffered various injuries. Referring to paragraph 44 of the judgement, he submitted that the claimant had suffered number of injuries, which have resulted in

abduction of right hip to 20 degree and left hip to 30 degree, rotation of right hip limited to 25%, shortening of right lower limb by 0.75 cm. and restriction of movement of right ankle, and the claimant had to undergo number of problems. He also submits that future of the respondent-claimant is absolutely ruined because the injury to the internal organs has adversely affected his fertility and from the doctor's opinion, it would be clear that the respondent-claimant cannot achieve the happiness of fatherhood. He submits that the amount of Rs.60,000/- deserves to be enhanced.

9. Taking into consideration the nature of injuries, percentage of permanent partial disability on different parts of the body, I think that the learned Tribunal was unjustified in awarding a sum of Rs.60,000/- only, the said amount should be enhanced to Rs.80,000/-. After hearing the parties, I hold that the respondent-claimant would be entitled to a sum of Rs.1 Lakh towards compensation. The award made by the learned Tribunal is reduced by Rs.57,589/-. The appellant shall be liable to pay a sum of Rs.1 Lakh with interest, as awarded by the learned Tribunal below. If the appellants have paid anything extra than what is being awarded by this Court, then, they would be entitled to recover the same and in case, within two months from today, the respondent-claimant does not deposit the excess amount, then, the appellant would be entitled to take out execution proceedings and recover the amount.

10. The appeal, so also the Cross Objections, are allowed to the extent indicated above. No costs.

[R.S.Garg, J.]

*kamlesh**